

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANDRE SMITH, T16447,
Petitioner,
v.
RICK HILL, Warden,
Respondent.

Case No. [20-cv-03235-CRB](#) (PR)

**ORDER DISMISSING PETITION FOR
A WRIT OF HABEAS CORPUS AS
SECOND OR SUCCESSIVE**

(ECF Nos. 2 & 3)

Petitioner, a state prisoner currently incarcerated at Folsom State Prison, has filed a second or successive petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a judgment of conviction and sentence from Alameda County Superior Court. His first petition was denied as untimely under 28 U.S.C. § 2244(d) on July 30, 2013. See Smith v. Lewis, No. 12-cv-04011-CRB (PR) (N.D. Cal. July 30, 2013) (order granting motion to dismiss).

A second or successive petition may not be filed in this court unless petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this court to consider the petition. See 28 U.S.C. § 2244(b)(3)(A); see also McNabb v. Yates, 576 F.3d 1028, 1029 (9th Cir. 2009) (§ 2244(b) applies when prior petition was dismissed as untimely). Petitioner has not obtained such an order from the Ninth Circuit. The instant petition accordingly is **DISMISSED** without prejudice to refiling if petitioner obtains the necessary order.

But based solely on petitioner's affidavit of poverty, his application to proceed in forma pauperis (ECF No. 2) under 28 U.S.C. § 1915 is **GRANTED**.

The clerk shall close the file and terminate all pending motions (see ECF No. 3) as moot.

IT IS SO ORDERED.

Dated: May 14, 2020



CHARLES R. BREYER
United States District Judge